



Department of Law Monthly Report

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In This Issue

COLLECTIONS & SUPPORT	1
COMMERCIAL & FAIR BUSINESS	2
ENVIRONMENTAL.....	4
HUMAN SERVICES	4
LABOR & STATE AFFAIRS	4
LEGISLATION & REGULATIONS	5
NATURAL RESOURCES.....	5
OIL, GAS, & MINING.	5
OPINIONS, APPEALS & ETHICS.....	6
TRANSPORTATION	7
CRIMINAL DIVISION	8
OSPA	12

Collections & Support

Unit Collects Over \$134,000 in Restitution Payments

In November, the collections unit opened 90 criminal and 22 juvenile restitution cases for collection. Initial notices were sent to 140 recipients. Thirty-nine judgments were paid in full, and satisfactions of judgment were filed. We received payments totaling \$61,060.34 toward criminal restitution judgments and \$73,369.03 toward juvenile restitution judgments in November. The unit requested 347 disbursement checks and issued 181 checks to recipients.

John v. Baker Modification Motion

In the much-litigated *John v. Baker* case, the custodial parent, John Baker, filed a motion to modify the state court's support order based on the financial affidavit that the obligor, Anita John, filed in a related supreme court appeal. Although the superior court has already ruled that child support issues in this case will not be referred to the Northway tribal court, Ms. John opposed Mr. Baker's motion by arguing, among other things, that child support issues should be referred to the tribal court. AAG Pamela Hartnell filed an opposition to Ms. John's argument, pointing out that that

particular issue had already been decided by the superior court and was on appeal to the supreme court. The judge agreed and again refused to refer the matter to the tribal court.

Court Dismisses Complaint Against CSED

Child support obligor Sidney Hertz appealed an administrative order by CSED to garnish a portion of his income as an inmate/employee of the Department of Corrections. Mr. Hertz claimed that CSED could not garnish these funds and that the CSED caseworker had inflicted emotional distress on him because of her actions.

AAG Pamela Hartnell opposed the motion, stating that to the extent Mr. Hertz's request was considered a complaint, it should be dismissed because he failed to state a cause of action. The court agreed with Ms. Hartnell's analysis and dismissed Mr. Hertz's complaint. The court held that (1) CSED and its caseworker were not in contempt of court; (2) Mr. Hertz could not recover for intentional infliction of emotional distress; and (3) CSED did not violate a 1997 court order. The court held "CSED may collect forty percent of Hertz's monthly income and his complaint alleging emotional damages and criminal contempt of court is unsupported by the submitted facts."

Court Disapproves Credit for HMO Enrollment

AAG Leroy Latta obtained a favorable ruling concerning a parent's right to credit for the cost of enrolling children in an HMO. In this case, the obligor lived outside of Alaska, while the custodial parent and child lived in Alaska. During a proceeding to modify his support order, the obligor stated that he had enrolled the child in an HMO located in his state of residence. The obligor requested credit against his child support obligation for one-half of the cost of that coverage, as provided in

Civil Rule 90.3(d). The custodial parent, however, testified that the HMO's services were not available to the child because the HMO had no preferred providers in Alaska. Despite this testimony, the court master recommended that the credit be allowed. Mr. Latta objected to that recommendation. In his final decision, Superior Court Judge Tan disapproved the master's recommendation and disallowed the credit for the cost of HMO enrollment where the services were not available to the child in Alaska.

Alaska Supreme Court Affirms In *Medlin* Appeal

The Alaska Supreme Court affirmed a superior court decision dismissing an action filed by Raymond Medlin against CSED. Mr. Medlin sought damages from CSED based on a petition for child support that was filed by CSED pursuant to the Uniform Reciprocal Enforcement of Support Act (URESA). AAG Leroy Latta argued that CSED owed Mr. Medlin no actionable duty of care which would give rise to tort damages. The supreme court agreed and held that the state and its employees owe no actionable duty of care to parents in connection with actions to establish child support under URESA.

Commercial & Fair Business

Settlement Reached in Waste Management Revenue Requirement Docket

This is a proceeding before the Regulatory Commission of Alaska examining Waste Management's ("WMA") rates. It is a carry over from RCA Docket U-00-30 that went to hearing last May. At the last hearing, the Public Advocacy Section of the RCA, represented by the Attorney General's Office, was successful in getting WMA's entire revenue requirement proposal rejected by the RCA as unreliable. This case is the follow up.

The Attorney General elected to participate in this case as successor to the Public Advocacy Section ("PAS") on June 30, 2003. WMA has filed new revenue requirement proposals for its four service territories, and is bifurcated into two phases: Revenue Requirement and Rate Design/Cost of Service Study ("COSS"). The current case only addresses WMA's revenue requirement. The Rate Design/COSS phase (Phase II) will follow after the Commission adjudicates the revenue requirement issues. New rates will not go into effect until after Phase II is adjudicated.

On September 26, 2003, negotiations between the Attorney General, WMA and Valley Refuse (an intervenor) produced a settlement. The parties filed a stipulation for submittal to the Commission resolving all issues. This stipulation was approved November 6, 2003.

The settlement agreement includes: (1) adoption of the Attorney General's request for frequent review of WMA's revenue requirement given its use of the "Operating Ratio" to compute return on equity (under the agreement, WMA's next rate case will be filed in 3 years from the completion of Phase II); (2) adoption of the Attorney General's request for WMA to change its capitalization policy for repairs exceeding a certain threshold; (3) adoption of the Attorney General's request to exclude increases in year 2003 payroll from rates; (4) exclusion of bonuses from rates. Other discrepancies noted by the Attorney General in prefiled testimony were satisfactorily resolved.

AAG DeVries represented the PAS and the Attorney General in these proceedings.

United Utilities, Inc., United-KUC Depreciation Docket Settles

This is a rate case proceeding for these telephone companies. UUI provides local exchange telephone service in 57 rural communities. United KUC provides local

exchange telephone service in Bethel, McGrath and Unalakleet. Both are rural companies, exempt from competition under the Telecommunications Act of 1996. 47 U.S.C. § 251(f). United-KUC's service areas were part of a statewide stable of local telephone companies owned by GTE which were divested in 2000. The RCA ordered rate cases for all of the divested telephone companies.

Preliminary proceedings in these Dockets required review of depreciations studies filed by these utilities. Further review of the utilities' revenue requirements and cost of service will follow a Commission decision on depreciation rates to be used to set utility rates.

A settlement agreement was executed in this docket on November 18, 2003 resolving inconsistencies found in the utilities' depreciation studies by the Attorney General in his investigation. This stipulation is awaiting Commission action. In the agreement reached, the utilities agreed to reduce depreciation rates for certain accounts resulting in a \$224,000 reduction in the utilities' depreciation expense. The parties also reached an agreement as to an acceptable accounting methodology to be used for the treatment of a negative depreciation reserve for digital switching equipment inherited from GTE.

AAG DeVries represented the Attorney General in this proceeding.

Attorney General Asks Court to Curtail Attorney's Fees In Bristol Bay Price Fixing Case

At the request of the Governor's office, the Attorney General filed a motion to intervene in the case of *Alakayak v. All Alaskan Seafoods, Inc.* for the purpose of objecting to the amount of attorney's fees requested by class counsel. The case is a class action filed in 1995 by Bristol Bay fisherman who claimed that several fish processors conspired to fix the price of salmon. A few processors settled their claims

with the class before trial, creating a settlement fund of about \$40 million. The case continued through a six-week trial, and the jury found that no price fixing occurred.

As a result of the verdict, the processors who won the case are entitled to recover a portion of their attorney's fees and costs from the settlement fund. The parties ultimately reached a settlement that will avoid any appeals, and agreed to pay \$13.8 million for the defendant's attorney's fees and costs, which will be paid from the settlement fund. Attorneys for the fisherman also asked for 30% of the fund, which is about \$12 million. The settlement was preliminarily approved, but class members still have a chance to object to the settlement.

The court denied the Attorney General's request to intervene in the case, but did grant a request to file an "amicus," or "friend of the court" brief. This will allow the Attorney General to raise arguments about the amount of attorney's fees that should be paid to class counsel. When deciding how much money the lawyers should get, the state argues the court must consider the fact that (1) plaintiff's lost on their claims at trial, and (2) defendant's fees and costs must be paid from the settlement.

AAG Ed Sniffen is handling this matter.

Environmental

Observatory Street Fuel Spill Claim Settled

The Department of Law settled the state's cost-recovery claim for responding to a home heating fuel spill on Observatory Street in Sitka. The spill affected the property at which the fuel tank failed as well as neighboring property. DEC conducted an emergency response and arranged for a state contractor to perform an interim removal action. Through

a cooperative settlement with the responsible owner of the property that contained the failed tank, the state recovered \$45,000 of its costs.

AAG Terry Thurbon and Litigation Assistant Kay Rawlings assisted DEC with the settlement.

Human Services

Court Dismisses *Bell v. State of Alaska*, Department of Health and Social Services

Francis and Tillie Bell live in Chevak, Alaska. They brought this lawsuit to challenge the way the Office of Children Services processed their application for a foster care license. Rather than bring the case as a simple appeal of an administrative decision, the Bells filed it as a Section 1983 action for declaratory and injunctive relief and attorneys' fees. In the complaint the Bells alleged that OCS had violated state child protection laws and the Indian Child Welfare Act. OCS filed a motion to dismiss the case. On November 17, 2003 Bethel Superior Court Judge Dale Curda dismissed the case with prejudice on mootness grounds. AAG Dan Branch represented OCS in the case.

Labor & State Affairs

Judge Issues Preliminary Injunction In Green Party Case

Judge Reese granted the Green Party's motion for a preliminary injunction requiring the state to grant "recognized political party" status to the Green Party. The Green Party lost recognized political party status at the last general election when the party failed to poll 5% of the vote for its candidate for governor, and failed to register voters equal to 5% of those who voted for governor at that election. The judge found that

Alaska's law on recognized political party status was unduly restrictive, and infringed on the Green Party's First Amendment right to freedom of association. We will continue to defend the Alaska law on recognized political party status as this case progresses to the final disposition stage. The case is now in the preliminary stages of litigation. AAG Sarah Felix is handling this matter.

Legislation & Regulations

2004 Governor's Bill Package Being Drafted

During November 2003, the Legislation and Regulations Section focused its efforts on editing drafts of legislation for the governor's consideration for the administration's 2004 bill package. Assistant attorneys general have spent a substantial number of hours researching and drafting the numerous proposed bills.

Regulations editing also kept the section very busy this month. Important regulations projects approved for filing concerned payment rates for Medicaid providers, fisheries economic development grants, salmon marketing grants, occupational licensing regulations for the Board of Certified Direct-Entry Midwives and the Board of Dental Examiners, fees for the Commercial Fisheries Entry Commission, and training requirements to teach the use of mobility aids.

Natural Resources

Petition for Hearing Granted In *State v. Dupier*

On November 19, the Alaska Supreme Court issued an order granting the state's petition for hearing in *State v. Dupier*. The case involves

three commercial halibut fishermen who harvested fish outside state waters, but brought the fish into state waters for sale without purchasing an interim-use permit from the Commercial Fisheries Entry Commission. The court of appeals, affirming the district court, held that the CFEC lacks statutory authority to require an interim-use permit in the halibut and sablefish fisheries.

The state will argue in its brief to the supreme court that the legislature intended the CFEC to have broad authority to issue interim-use permits, including in the circumstances that gave rise to this case. AAG Jon Goltz is handling this matter.

Participation in Board of Fisheries Meetings

AAG Lance Nelson represented the Department of Law during the Board of Fisheries meetings on statewide finfish issues and the Chignik Salmon Cooperative Fishery, giving comments and advice to the Board and Department of Fish and Game on potential legal issues raised in regulatory proposals.

Oil, Gas, & Mining

Conoco Phillips' Cost Data Reviewed

In November the Anchorage oil and gas section reviewed Conoco Phillips' cost data for the preceding year and negotiated a modification to the Conoco Phillips royalty settlement agreement. The modification resulted in reduced transportation costs and modest additional royalties for the state. The negotiation process was in lieu of formal arbitration proceedings.

Opinions, Appeals & Ethics

Alaska Supreme Court to Consider Issue of Administration of Psychotropic Medication to Incompetent Mental Patients

Under Alaska law, the superior court must approve a state mental health treatment facility's proposal to administer psychotropic medication to an involuntarily committed mental patient upon finding that the patient is incompetent to provide informed consent to the proposed medication, if the patient has not, while competent, expressed contrary desires about such medicines. Preliminarily, before ordering a patient committed, the court must find that the patient is mentally ill and as a result is either likely to cause harm to himself or herself or to others, or is gravely disabled. In addition, before the court is called upon to determine the patient's competence, the state's mental health professionals must determine that commitment is the least restrictive alternative available, and that the patient's condition requires treatment with psychotropic medicine.

The appellant in this case, *Faith Myers v. Alaska Psychiatric Institute*, Alaska Supreme Court, #S-11021, a patient for whom the court ordered medication, argues that the statutory scheme deprived her of constitutional rights to due process, privacy, and liberty, under the state and federal constitutions. She contends that before approving the use of medication, a court must determine that the medication will serve the patient's best interests and that no less restrictive alternative is available, and in addition must determine whether the patient, if competent, would personally choose to receive the medication.

The state argues that the statutory scheme passes constitutional muster, and that the

legislature's reliance upon medical professionals to make medical decisions does not abridge a patient's constitutional rights. The appeal is currently at the briefing stage in Alaska Supreme Court. AAG Mike Hotchkin is handling this case.

***McGrew v. State* Argued in the Alaska Supreme Court**

AAG Jim Baldwin provided relief for the temporarily understaffed Torts Section by presenting oral argument in the Alaska Supreme Court in a case in which the appellant is seeking to overturn the superior court's grant of a Civil Rule 12(6) motion to dismiss. AAG Gail Voigtlander successfully argued below that paternal grandparents of an orphaned child could not maintain a claim arising out of a CINA proceeding for intentional and negligent infliction of emotional distress against the Division of Family and Youth Services. Gail successfully argued that the grandparents had no valid claim because the state social workers owed the grandparents no duty of care. The task of presenting argument seemed easy enough until it became clear that the sole basis for the superior court's decision, "no duty owed," possibly did not address the plaintiffs' intentional tort claim, which was also swept into the court's order of dismissal. Fortunately, Gail recognized this before oral argument and was able to help prepare Jim for the possibility of hard questions from the court - which were indeed asked by Justice Fabe.

Ethics Opinion Issued Regarding the United Way SHARE Campaign

State Ethics Attorney Paul Lyle issued an ethics opinion concerning the annual United Way SHARE campaign. We concluded that the Ethics Act permits the solicitation of voluntary service and contributions to the SHARE campaign from state employees. However, state employees who are board members of the United Way or their member agencies (or whose immediate family members are board

members) may not serve as SHARE coordinators and key workers. We also concluded that SHARE campaign coordinators and key workers must truly volunteer for those positions and that employees may not be coerced to serve in the SHARE campaign or make contributions to it.

Transportation

Air Cargo Transfer Authority Passes Congress

Congress passed a law allowing foreign air carriers to transfer cargo between planes and between carriers at the Ted Stevens Anchorage International Airport. This law will increase foreign traffic through the airport, with significant positive benefits to the state and residents of Anchorage. AAG John Steiner assisted DOTPF and the Governor's Office in acquiring this change of law.

Alaska Supreme Court Upholds Decision to Fill Wetlands

The Ted Stevens Anchorage International Airport applied for a permit to fill wetlands. The former Alaska Division of Governmental Coordination determined the permit would be consistent with the Alaska Coastal Management Program. Environmental groups contested this consistency determination. The superior court affirmed the consistency determination, and the environmental groups appealed to the Alaska Supreme Court. The Alaska Supreme Court has now issued a lengthy decision upholding the consistency determination. AAG Jim Cantor represented the state.

Yakutat Airport Leasing Decision Issued

The Commissioner of Transportation issued a decision in a dispute involving a lot at the Yakutat Airport. A fish processor leased a prime apron lot at the airport, although other apron lots could fulfill the processor's business purposes. The fish processor used the lot approximately 17 weeks per year to house pilots and tie down aircraft. In recent years the fish processor's plant was closed due to depressed prices. When the lease expired, the fish processor requested a new lease. A year round air taxi service also sought to lease the lot. Applying regulations adopted in 2002 to promote and maintain a strong aviation industry, DOTPF's statewide airports system leased the lot to the air taxi service. The fish processor appealed this determination. Following a three-day evidentiary hearing before a hearing officer, the Commissioner upheld the award of the lease to the air taxi service. AAG Peter Putzier represented DOTPF's statewide airports system in this matter.

Hatchery Design Claim Settled

An engineering firm designed improvements to a state fish hatchery. The improvements did not work. The Department of Fish and Game contended the failure was due to a defective design. Outside counsel Bruce Falconer, AAG Gary Gantz, and Deputy AG Scott Nordstrand attended a successful mediation in Seattle, where the engineering firm agreed to pay the state \$495,000.

Fairbanks Condemnation Case Resolved

DOTPF condemned strips of land to widen the Old Steese Highway in Fairbanks. On the second day of trial, the state and the owners agreed on the value of the land taken. The owners continued to argue that the taking lowered the value of the remaining mall by over \$590,000 because parking had been lost. After an eight-day trial, the jury unanimously agreed with DOTPF that the loss of parking had no effect on the value of the mall. The court

entered judgment against DOTPF in the amount of \$236,500, representing the value of the land taken, interest, costs, and fees. DOTPF believed a portion of the fee award was legally erroneous and prepared to appeal. Following negotiations, the State and the owners agreed to forego their respective appeals, and instead agreed to a final settlement sum of \$215,000. AAG Tom Dillon represented DOTPF in trial. AAG Jim Cantor assisted with the final settlement.

Inverse Condemnation Resolved

A Juneau couple lost their home to a landslide induced by heavy rains. A jury found DOTPF liable under an inverse condemnation theory based on the residents' argument that DOTPF changed the flow of water when it rehabilitated a road. The court entered judgment in the amount of \$1,359,600, representing the residents' damages, interest, costs, and fees. Following an analysis of appeal points, the parties agreed to a final settlement sum of \$1,138,844. Former AAG Bill Cummings represented the state in trial. AAG Paul Lyle assisted with the final settlement.

Hearing before Nuclear Regulatory Commission

A radiation safety officer for DOTPF alleged the department violated certain safety standards, and retaliated against him for reporting the violations. A hearing was held in Texas before a panel of the Nuclear Regulatory Commission. AAG Gary Gantz represented the state.

Hearing in Nondalton Road case

The Department of Transportation and Public Facilities proposes to build a road between Iliamna and Nondalton, in Southwestern Alaska. The owner of a private lodge and a sport fishing group sued to stop the project, alleging the department violated its planning statutes. Superior Court Judge Sharon

Gleason heard oral argument on cross-motions for summary judgment and for preliminary injunction. AAG Susan Urig argued on behalf of the state.

Criminal Division

ANCHORAGE

The Anchorage office presented 27 cases to the grand jury during the month, and four cases went to trial.

During November, there were two homicides in Anchorage. In Spendard on November 8, a woman passenger in a car was shot and killed when a person in another car fired from a vehicle driving by. On November 25th, an off-duty military police officer was shot and killed near Lake Otis Parkway and Dowling Road in similar circumstances. No one has been arrested in either case.

A potentially deadly domestic dispute ended peacefully. A man was charged with felony assault for threatening to kill his girlfriend and running after her carrying an AK-47. The man ran back inside after police arrived, and later surrendered. Inside the apartment, officers found the AK-47, with a round in the chamber and 29 cartridges in a clip loaded in the weapon.

A man was charged with felony assault for shooting occupied vehicles near Northern Lights Boulevard and Muldoon Road. In one case, a bullet entered the right passenger window and had gone through the driver's headrest. Police saw the defendant looking out a trailer window and went to talk to him, and he admitted shooting at cars because kids had damaged a window to his trailer earlier.

Guns were not the only weapons of choice in November. A man was indicted for felony

assault for slashing a crewmember's face with a knife in Unalaska, in a dispute over a car. An Anchorage man was indicted for the same crime for stabbing an acquaintance as they argued over a beer.

A jury convicted John Holan of sexual abuse of a minor in the second degree. Holan was convicted of going into his stepdaughter's bedroom, lying on top of her, and squeezing his pelvis against hers. She said the abuse had started when the family lived in Norway when she was 11 years old and continued when they moved to the United States. She was 16 when the charged offense took place. ADA Taylor Winston tried the case for the state.

A jury convicted William Fogarty of driving under the influence and driving while license suspended. Fogarty defended on the grounds he was not driving the motor home despite a trooper seeing him driving. The Anchorage office helped out the Kenai office by convicting Dominic Allen of driving under the influence and two counts of violation of conditions of release in a jury trial in Kenai. Allen was found slumped over the wheel of his vehicle, drunk, while out on bail for two other cases, in which there were bail orders that he was not supposed to be drinking. A jury acquitted a bartender of furnishing alcohol to a minor, when the bartender checked the IDs of two undercover 19-year-olds, then sold a drink to one, but not the other.

BARROW

ADA Danielle Simmons stepped up to the plate while ADA Tom Temple was on leave and, with little notice, went to Barrow to conduct a trial. Jamon Benson was convicted of fourth degree assault domestic violence and two counts of violating bail release conditions. Benson was found to be a worse offender at sentencing and given eighteen months with six months suspended.

BETHEL

It was a bad month for jury trials involving sex offenses in Bethel. A man was found not guilty of sexual assault in the second degree and guilty of furnishing liquor to a minor. Another man was found not guilty of assault in the second degree, and a third was found not guilty of sexual assault in the first degree. In the grand jury, four men were indicted for sexual assault; four men for sexual abuse of a minor; one man for felony assault and one man for escape

FAIRBANKS

ADA Jenel Domke single-handedly prosecuted a multi-week, five co-defendant sexual assault case in front of newly appointed Superior Court Judge Randy Olsen. A jury found three defendants not guilty of all charges, two of the defendants not guilty of several of the charges and was unable to reach verdicts on the remaining counts. A plea agreement has been reached where the remaining two defendants will plead to felony assault.

After a day and a half of deliberations, jurors convicted a Fairbanks man of assaulting a woman walking on a bike path in Tok in June. The jury was unable to reach a decision regarding the attempted rape charge. It is expected that he will be retried on the attempted rape.

An Allakaket man, Frederick Ned, was convicted of manslaughter for driving his truck off the village's airport runway when he was drunk, causing the death of his passenger. Ned has been sentenced to seven years.

Superior Court Judge Ben Esch has dismissed the application for a new trial of one of the two men convicted of participating in the 1997 fatal beating of a teenager in downtown Fairbanks.

The Fairbanks grand jury indicted 28 individuals this month on various drug and theft charges.

JUNEAU

ADA Doug Gardner and Paralegal Carrie Hulse obtained a guilty verdict after an eight-day trial in a \$90,000 theft case that was an "inside job" by an employee of the K-Mart store in Juneau. One of the difficulties with the case was the number of potential suspects employed in the store when the theft occurred. The case was also complicated because the defendant duct-taped and then shot himself in an attempt to divert suspicion away from him to others.

KENAI

Not a week goes by when the grand jury is not indicting at least one or two people for felony drunk driving. This month several drunk driving cases were linked to vehicle theft or eluding charges. We even had to have preliminary hearings in a few of them because there was no grand jury on the Friday after Thanksgiving. Two of the hearings were in front of superior court judges who had never done prelims before.

A Homer sexual abuse of a minor case ended in a mistrial just before the state was going to call its last witness, the victim. The defendant in the case was the village public safety officer who was indicted as being in a position of authority to a high school girl. Just before the victim was to testify, the defense attorney announced that she intended to pursue an affirmative defense regarding the victim's age.

Special thanks go to ADA Scot Leaders, for extending his stay to help out the office.

KETCHIKAN

An unrepentant Ty Douglas was convicted of two counts of sexual assault in the first degree for two incidents of raping his girlfriend. The victim had bruises all over her body including her inner thighs, and evidence matched Douglas' DNA. During the trial, Douglas was very disruptive talking and making comments whenever he wanted. When the jury returned the verdicts he yelled at them and everyone else and spit on the police as he left the courtroom.

Thomas Nelson was convicted of driving while intoxicated, after being found extremely drunk and passed out behind the wheel of his parked car with his car keys on the floor next to him. Another man was found not guilty of contributing to delinquency of minor for hosting an alcohol drinking party for his underage friends at his home.

The grand jury was also busy. Four co-defendants were indicted for burglary and assault for forcing their way into a residence and beating up several people. The grand jury indicted four people for different felony assault charges, two people for driving while intoxicated, three people for different vehicle thefts in the first degree, and two people for separate misconduct involving controlled substance in the fourth degree.

KODIAK

A Kodiak man convicted of sexual assault in the first and second degree, following a five-day jury trial in July, was sentenced in November to 20 years in prison with five years suspended. He was also placed on probation for seven years. He was convicted for sexually assaulting his sister-in-law while she was in an alcohol-assisted deep sleep, and for continuing the assault once she awoke. DNA evidence developed by the State Crime Lab corroborated the victim's story and was instrumental in the successful prosecution of this crime.

A Kodiak man already on probation for felony weapons misconduct was again convicted of felony weapons misconduct after he was found in possession of a concealable weapon. He was also convicted of felony assault in the third degree for threatening members of his own family with the same weapon. This defendant was sentenced to five years incarceration with two years suspended, and in addition his probation was revoked and he was ordered to serve two additional years in jail consecutively. He will be placed on probation for 10 years.

The Kodiak Grand Jury indicted a man for two counts of first degree sexual abuse of a minor, following an investigation by the Kodiak Police Department which revealed three years of sexual abuse of his girlfriend's daughter. The abuse began when the victim was nine years old. This defendant remains incarcerated on \$50,000 bail pending a February trial date. The grand jury also indicted a Larsen Bay man, for sexual abuse of a minor in the first degree and sexual assault in the first degree, for sexually assaulting a 14-year-old minor after a teen alcohol party in which the defendant had supplied the bulk of the alcohol. A February trial date is pending.

The Kodiak Narcotics Unit, comprised of officers from the Kodiak State Troopers' Post and the Kodiak Police Department, operating in conjunction with the Bureau of Alcohol and Drug Enforcement, Western Alaska Alcohol and Narcotics Task Force, raided a meth lab operating in Chiniak. The two defendants found at the lab were arrested and each indicted for three counts of misconduct involving a controlled substance in the second degree, class A felony offenses, and two counts of misconduct involving a controlled substance in the fourth degree, class C felony offenses. Each defendant is being held on \$50,000 bail pending their February trial date. Among the items found at the lab and seized as evidence, was a mail ordered videotape addressed to one of the defendants entitled

(we kid you not) "Cooking Crank with Uncle Fester." This was one tape of a two-tape boxed set. Although the second tape was not located, it should be entitled "Uncle Fester Goes to Jail."

KOTZEBUE

A former village police officer in Selawik was charged in a sexual assault and sexual abuse of a minor case involving a 13-year-old girl occurring in 2002. The victim became pregnant as a result of the assault.

A Kotzebue man was charged with sexual assault in the second degree. In an all too familiar story, he is accused of having sex with a woman who was passed out, with the victim waking to find him having sex with her.

Defendant Rodney Middendorf was indicted for failure to register as a sex offender. Middendorf has a previous misdemeanor conviction for failure to register, making his second time around a felony.

The troopers at the Kotzebue airport contacted a man based on a tip that he was headed to Selawik to sell marijuana. Six bags of marijuana were discovered, resulting in misconduct involving a controlled substance in the fourth degree charge.

NOME

A 71-year-old Nome resident was indicted on a charge of first degree murder for killing his wife by shooting her with a shotgun. After the homicide, the man apparently shot himself, causing serious injuries, but not life threatening. His actual arrest was delayed until his medical conditions allowed him to be taken from the hospital to the jail.

Another older defendant, age 64, was arrested in Unalakleet for sexually assaulting the adult daughter of his long-time girlfriend. Both had been drinking and the victim awoke to find him

engaged in sex with her. Unalakleet was also the site for two marijuana cases. Unalakleet is served by a direct flight from Anchorage and has become something of a way point for drug and alcohol dealers heading for surrounding villages. In unrelated cases, a Koyuk man and a St. Michael woman were intercepted at the Unalakleet airport with significant quantities of marijuana concealed on their person.

A resident of Anchorage had the bad luck to fly into Stebbins on a plane that a trooper was intending to leave on. Acting on a hunch, the trooper contacted the man and recovered 150 grams of marijuana, all packed in one-gram bags and ready to sell (marijuana sells for \$40 per gram in Stebbins). The man was indicted on misconduct involving a controlled substance in the fourth degree.

In another drug case, a radiologist in Nome was charged with possession of a variety of narcotic drugs, including morphine. Investigation revealed that a local health care professional, without benefit of a prescription, had given some of the drugs to him.

PALMER

In a 31-count indictment, the Palmer grand jury indicted four men and two women on drug-trafficking charges. The indictment was the result of a lengthy investigation conducted by the MAT-SU ABADE unit. Most of the charges involve delivery of cocaine or possession of cocaine with intent to deliver. One of the men is also charged with the unclassified felony of misconduct involving a controlled substance in the first degree for engaging in a "continuing criminal enterprise."

November was also a busy trial month, with seven cases going to trial. Jason Geisler was convicted, after a jury trial in Palmer, of three counts of first-degree robbery for his participation as the gunman in a car-jacking. The car-jacking was part of a crime spree in January of 2001, which also included a

robbery of a local grocery store and a drive-by shooting.

Lee Richards was convicted, after a jury trial in Palmer, of felony driving under the influence of alcohol (his 11th DUI conviction) and driving on a revoked license. Evidence at trial showed Richards proceeded to drive directly back into a ditch. At trial, Richards admitted sitting in the truck and drinking vodka, but contended he was not driving.

Peter Gerbin was sentenced to six years, with three years suspended, and seven years probation after pleading to sexual abuse of a minor in the second degree for abusing a 5-year-old boy.

In separate trials, Palmer juries found Rubin Pacheco and Bogulaw Kosxela guilty of driving under the influence of alcohol. A Cordova jury found Emil Ruk guilty of driving under the influence of alcohol. Mark Ring was convicted, after a bench trial in Cordova, of taking a cow moose and exceeding the bag limit. Rasim Kadriu was convicted, after a bench trial in Palmer, of taking a sub-legal Dall sheep.

SITKA

The Sitka grand jury indicted three defendants on charges of drugs, criminal mischief and vehicle theft. Several domestic violence cases resolved by change of plea this month including a felony domestic violence assault.

OSPA

Special Prosecutions Unit

Waterkist Corporation, d.b.a. "Nautilus Foods," admitted commercially processing seafood without submitting any information to the state on its operation. Without the safety and quality controls normally provided by the permitting process, the product churned out of the

clandestine operation was so substandard that Safeway stores in Washington pulled the product off their shelves and had it destroyed. The company was ordered to pay an \$8,000 fine with \$10,000 more suspended.

Axel Snyder pled to felony bootlegging for a controlled buy of alcohol by Kotzebue police officers and received a three-year presumptive sentence. Brian Heckman was sentenced in Anchorage for misdemeanor bootlegging, after attempting to ship 30 “burped” bottles to the dry community of Pilot Station, receiving four months in jail and a \$4,000 fine. The court rejected defense arguments about stress rehabilitation, saying “Exactly what am I supposed to be trying to rehabilitate him from,...the desire to make money?” Three more defendants were indicted in November for two separate incidents of attempted importations.

The Anchorage District Court denied Public Defender Agency motions to change venue to various bush locations in cases in which the defendants are stopped with alcohol at the Anchorage airport while attempting to reach dry villages.

Appellate Unit

Petitions of Interest

In camera review of personnel file. The state sought interlocutory review of Superior Court Judge Pengilly’s order directing the state to produce a trooper’s personnel file for *in camera* review. The state argued that Judge Pengilly should not have directed it to produce the file in the absence of a defense showing that the file would contain relevant material. The court of appeals denied the state’s petition for review without comment. *State v. Gillam*, A-8707.

Briefs of Interest

Effectiveness of cross-examination. The state argues that Superior Court Judge Torrisi erred in setting aside a sexual assault conviction based on claims of ineffective assistance of trial counsel. Judge Torrisi found defense counsel’s cross-examination of the victim to be deficient despite counsel’s explaining the tactical basis for his cross-examination and despite the defendant failing to show what evidence the proposed additional questions might have produced or how that evidence would have changed the trial’s outcome. *State v. Savo*, A-8583.

Accepting plea at arraignment; double jeopardy. The state argues that a magistrate properly refused to accept the defendant’s no-contest plea to misdemeanor DWI at arraignment when the defendant was charged with both felony and misdemeanor DWI for the same conduct. The arraignment, which took place in Nenana, was not attended by the prosecutor. The state also argues that even if the defendant had been allowed to plead no contest to the misdemeanor, continued prosecution of the felony would not violate the double-jeopardy prohibition. *Ridlington v. State*, No. A-8533

Self-defense to criminal mischief. The defendant was convicted of third-degree criminal mischief for breaking the windows out of a truck belonging to a man he found sleeping with the defendant’s mother. The state argues that self-defense generally cannot be raised as a defense to property crimes and that then-acting Superior Court Judge Bolger correctly precluded the defendant from arguing that he acted in self-defense in the case. The state argues that the judge correctly characterized the defendant as trying to run a defense of necessity, rather than self-defense. *McGee v. State*, No. A-8452.

Effectiveness of advice to change plea. The state argues the effectiveness of an attorney’s

advice to a defendant who enters a mid-trial no-contest plea is measured by the advice the attorney provided in connection with the plea, and not, as asserted by the defendant, his belief that his attorney was ineffective during the trial. As support for its argument, the state points out that the defendant stated that he was satisfied with his attorney's advice and performance during the change-of-plea inquiry. (The prosecutor perceptively urged the judge to conduct a searching inquiry before accepting the plea.) *Coronell v. State*, A-8463.

Post-conviction cumulative error argument.

The state argues that a claim of cumulative error in a post-conviction relief action cannot be based on a combination of actions taken by counsel pretrial, at trial, and on appeal. The state argues that a cumulative-error claim does not lie where the claimed errors relate to different proceedings in the case: a suppression decision, a trial decision, and an appellate decision. *Samskar v. State*, A-8509.

Statute and Rule Interpretations

Alaska Evidence Rule 606(b) and mistaken or erroneous verdicts. The court of appeals interpreted Evidence Rule 606(b) as not preventing a judge's inquiry of jurors when it appears that the verdict form does not accurately reflect their decision. (Alaska Evidence Rule 606(b) generally excludes inquiry into what jurors stated or thought during their deliberations, however.) *Crouse v. Municipality of Anchorage*, Op. No. 1905 (Alaska App., November 7, 2003).